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REPORT OF THE INTERGOVERNMENTAL GROUP TO MONITOR THE SUPPLY AND SHIPPING OF OIL AND PETROLEUM PRODUCTS TO SOUTH AFRICA*

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* The present document is a mimeographed version of the report of the Intergovernmental Group to Monitor the Supply and Shipping of Oil and Petroleum Products to South Africa. It will be issued subsequently in final form as Official Records of the General Assembly, Forty-seventh Session, Supplement No. 43 (A/47/43).

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LETTER OF TRANSMITTAL

5 November 1992

Excellency,

I have the honour, in accordance with paragraph 5 of General Assembly resolution 46/79 E of 13 December 1991, to transmit herewith the report of the Intergovernmental Group to Monitor the Supply and Shipping of Oil and Petroleum Products to South Africa, which was adopted on 5 November 1992.

On behalf of the Group, I would like to request that this report be issued as a document of the General Assembly and the Security Council.

Accept, Excellency, the assurances of my highest consideration.

(Signed) Anthony B. NYAKYI
Chairman
Intergovernmental Group to Monitor
the Supply and Shipping of Oil and
Petroleum Products to South Africa

His Excellency
Mr. Boutros Boutros-Ghali
Secretary-General
United Nations

I. INTRODUCTION

1. The Intergovernmental Group to Monitor the Supply and Shipping of Oil and Petroleum Products to South Africa was established by the General Assembly in its resolution 41/35 F of 10 November 1986. Since then the Intergovernmental Group's work has been endorsed by the General Assembly, most recently in its resolution 46/79 E of 13 December 1991. The Intergovernmental Group consists of the following Member States: Algeria, Cuba, Indonesia, Kuwait, New Zealand, Nicaragua, Nigeria, Norway, Ukraine and the United Republic of Tanzania. At its meeting on 14 January 1992, the Intergovernmental Group re-elected Mr. Anthony B. Nyakyi (United Republic of Tanzania) as Chairman and Ms. Nabeela Al-Mulla (Kuwait) as Vice-Chairman, and elected Mr. Rolf E. Fife (Norway) as Rapporteur for the current year.

2. Representatives of the liberation movements of South Africa, namely, the African National Congress of South Africa (ANC) and the Pan Africanist Congress of Azania (PAC), have participated in the meetings of the Intergovernmental Group as observers. The Intergovernmental Group, since its inception, has cooperated with the Organization of African Unity (OAU) and other intergovernmental and non-governmental organizations.

3. Since its report to the General Assembly at its forty-sixth session, 1/ the Intergovernmental Group has continued its work following the same lines as in previous years. It has considered information received on alleged violations and port calls in South Africa of ships that have the capability of carrying oil and petroleum products. The cases investigated are categorized in four groups. First, cases of alleged violations of the oil embargo against South Africa from 1987 to 1991 are contained in annex I. The second category represents cases of alleged violations of the oil embargo in 1991 (and some related to previous years) that were investigated in 1992. These cases are contained in annex II. The third category comprises the cases of ships capable of carrying oil or petroleum products that called at South African ports in 1989 and 1990. These cases were investigated in 1990 and 1991 and are contained in annex III. Cases of ships from the same category that called at South African ports in 1991 are contained in annex IV. Annexes I to IV are contained in addendum I to the present report.

4. The Intergovernmental Group is maintaining contacts with Governments, intergovernmental and non-governmental groups on all questions that fall under its mandate. The Intergovernmental Group highly appreciates the cooperation extended by those Governments which have responded to its communications and investigated the cases of alleged violations of the oil embargo against South Africa, or cases of calls at South African ports by ships capable of carrying oil or petroleum products. The contributions of non-governmental groups have been especially valuable to the work of the Group.

5. The Intergovernmental Group has closely followed developments in South Africa and particularly the process of negotiations to find a peaceful end to apartheid and the establishment of a united, democratic and non-racial South Africa. The Group was also alarmed by the continuing violence in that country, loss of life of large numbers of innocent civilians and the inability of the parties concerned, in particular the South African authorities, effectively to stop the violence, which has led to a prolonged interruption in the negotiation process towards a democratic and non-racial South Africa.

6. The Intergovernmental Group welcomes the initiative taken by the African Group at the United Nations to bring the issue of violence in South Africa before the Security Council. It also supports the efforts of the Secretary-General and his Special Representative. The Intergovernmental Group expresses the hope that steps taken in implementation of Security Council resolutions 765 (1992) and 772 (1992) will contribute to ending the violence and the resumption of negotiations with wide political participation.

7. The Intergovernmental Group expresses the hope that the South African authorities will take effective steps to stop the violence, release all remaining political prisoners, solve the issue of political exiles and abrogate remaining repressive legislations and regulations. In addition, the Government of South Africa must act in good faith while conducting constitutional negotiations with representatives of the Black majority.

8. The Intergovernmental Group has always maintained that the premature lifting of sanctions, particularly the oil embargo against South Africa, will not be helpful to the efforts of the international community to end apartheid and efforts aimed at establishing a united, democratic and non-racial South Africa. Against this background, the Chairman of the Intergovernmental Group issued a statement on 16 April 1992 concerning the decision of the European Economic Community (EEC) to lift its ban on the supply of crude oil to South Africa. A copy of that statement was transmitted to the Permanent Representatives of the States members of EEC to the United Nations. On 5 May 1992, the Permanent Representative of Portugal replied to the Chairman on behalf of EEC. The matter will be dealt with in the chapter on the status of the oil embargo against South Africa.

9. The Intergovernmental Group has continued to carry out activities in fulfilment of its mandate, including maintaining close contacts with Governments and intergovernmental and non-governmental organizations. On 3 April 1992, the Chairman of the Intergovernmental Group, bearing in mind the desire to maintain a close cooperation with OAU, forwarded a copy of the model law on the oil embargo against South Africa to the Executive Secretary of OAU with the request that it be commended to the African States.

10. The Intergovernmental Group took note of contacts between South Africa and some African States aimed at establishing cooperation among them regarding oil trade. The Group, while realizing that those African States may be in dire need of assistance in the field of energy, urges them to continue to observe the oil embargo, including avoiding cooperation with South Africa in matters relating to oil and energy, until there is a profound and irreversible change in South Africa in accordance with the Declaration on Apartheid and its Destructive Consequences in Southern Africa (resolution S-16/1, annex).

11. The Intergovernmental Group has been striving to ensure effective observance of a voluntary embargo of the supply and shipping of oil and petroleum products to South Africa. This task is complementary to other efforts by the international community, which has determined to follow a strategy of pressure and encouragement to induce the South African authorities towards the eradication of apartheid and to enter into negotiations with the representatives of the Black majority for the elimination of apartheid and the establishment of a united, democratic and non-racial South Africa.

12. The present report was adopted by the Intergovernmental Group at its 14th meeting, held on 5 November 1992.

II. STATUS OF THE OIL EMBARGO AGAINST SOUTH AFRICA

13. Since February 1990, when the South African authorities adopted a number of measures aimed at the eradication of apartheid and towards negotiations with the representatives of the Black majority, major developments have taken place within and outside South Africa. As will be recalled, the Declaration on Apartheid and its Destructive Consequences in Southern Africa of 1989 was adopted by the General Assembly by consensus and contains principles to guide Member States in relation to the process of the eradication of apartheid and the establishment of a united, democratic and non-racial South Africa. The General Assembly has also reaffirmed by consensus those principles in subsequent resolutions affirming the principles contained in the Declaration. In the meantime, the strategy of phased lifting of sanctions has gained wide support within the international community. According to that strategy, sanctions against South Africa are to be lifted in accordance with the progress achieved towards the eradication of apartheid and the establishment of a united, democratic and non-racial South Africa.

14. In spite of the above, a number of Governments have taken measures to lift the oil embargo. The Intergovernmental Group finds the lifting of the oil embargo premature. In terms of General Assembly resolution 46/79 E, it urges the importance of maintaining the oil embargo "until there is clear evidence of profound and irreversible changes, bearing in mind the objectives of the Declaration on Apartheid and its Destructive Consequences in Southern Africa, such as the adoption of a non-racial and democratic constitution for a free South Africa". Indeed, the Intergovernmental Group has long maintained the most effective way to enforce the embargo to be the adoption by the Security Council of a mandatory embargo under relevant provisions of the Charter of the United Nations.

15. At the meeting of the Intergovernmental Group held on 14 January 1992, the Chairman stated:

> "Both Mr. Nelson Mandela, the President of the African National Congress, and Mr. Clarence Makwetu, the President of the Pan Africanist Congress of Azania, have emphasized that the oil embargo against South Africa, along with the arms embargo, should be among the last sanctions against South Africa to be lifted. This means that the oil embargo will be lifted only when a new constitution for a democratic and non-racial South Africa has been adopted. Having said this, I would hasten to add that in these, as in all matters of human relations, a certain amount of flexibility is to be expected. If, for example, there is satisfactory progress on the transitional arrangements, and if the liberation movements of South Africa feel that lifting the oil embargo would be conducive to peaceful progress towards ending apartheid, the Intergovernmental Group will definitely review the situation and recommend appropriate action by the General Assembly."

Therefore, the Intergovernmental Group does not consider the question of the oil embargo against South Africa in a rigid context. It stands ready to consider the lifting of the oil embargo against South Africa once the necessary conditions are established.

16. In view of the above, the Chairman of the Intergovernmental Group issued a statement on 16 April 1992 concerning the decision of EEC to lift the ban on the supply of oil to South Africa in which he stated:

> "I wish to express regrets at the decision of 6 April of the Council of Ministers of the European Community at Luxembourg to lift the ban on the export of oil to South Africa, which had been imposed in September 1985. In this context, I refer particularly to resolution 46/79 E of 13 December 1991 on the oil embargo against South Africa. ... While recognizing that some progress has been made in South Africa, it must be emphasized that neither an agreement on transitional arrangements nor on a new non-racial democratic constitution has been achieved. Against that background, it is regrettable that the European Community has decided to lift the oil embargo since this decision, as any premature decision on sanctions at this time tends to support one party only - the South African Government - in the negotiations conducted within the Convention for a Democratic South Africa (CODESA) rather than the CODESA process as a whole. ... The strategy of pressure and encouragement which emerged as the consensus of the international community regarding South Africa, and which the Intergovernmental Group has consistently supported, should be maintained. Accordingly, the oil embargo or other comparable policies against South Africa concerning the prohibition on the supply and shipping of oil and petroleum products to South Africa should be maintained and lifted only when the appropriate conditions as set forth in the Declaration on Apartheid and its Destructive Consequences in Southern Africa, which was adopted by consensus in 1989, are met."

17. On 16 April 1992, the Chairman forwarded the statement to the Permanent Representatives of the States members of EEC to the United Nations. In the covering letter, the Chairman stated:

> "I would like in this context to appeal to the individual members of the European Community to continue to respect the ban on the supply of oil to South Africa for the time yet needed to ensure that the process initiated in the Convention for a Democratic South Africa is irreversible. Furthermore, in order to maintain the international consensus in this regard, and since the oil embargo against South Africa is observed by many States, and oil trade is very closely linked internationally, I hope that any decision taken by the European Community will not adversely affect the policies of other States which are still determined to maintain the oil embargo against South Africa until profound and irreversible changes take place in that country as agreed by the whole international community in relevant General Assembly resolutions. I am looking forward to receiving your positive response and the cooperation of your Government in this regard."

18. On 5 May 1992, the Chairman received a reply from the Permanent Representative of Portugal, President of EEC, in which it was stated:

> "Following very positive developments which have taken place in the framework of the Convention for a Democratic South Africa, the Community and its Member States decided to lift the oil embargo implemented since 1985. This decision was adopted in accordance with the decision of the Rome European Council of December 1990 to review gradually the sanctions

adopted towards South Africa. The aim of this policy is to support the creation of a democratic South Africa and the well-being of all its people, and thus the Community and its Member States hope that the measures taken in the Luxembourg Council on April 6 will encourage further positive developments in South Africa, in particular the establishment of an interim government."

19. In view of the above, the Intergovernmental Group considers it essential that all Governments extend their cooperation in implementing relevant United Nations resolutions and in particular by responding to inquiries relating to its investigation of cases of alleged violations of the oil embargo and port calls in South Africa.

III. ACTIVITIES OF THE INTERGOVERNMENTAL GROUP

20. As was the case in previous years, the major part of the work of the Intergovernmental Group is the collection of data on voyages of ships to South Africa, which strongly indicate that a delivery of oil or petroleum products took place. The Group gathers information from non-governmental organizations and the shipping industry on the movements of ships that might have violated the embargo. Inquiries are sent to Governments concerned in order to obtain information that would allow the Group to decide whether a prima facie case exists requiring further consideration. Once a response is received, the Intergovernmental Group examines closely all the information at its disposal. The Intergovernmental Group has always striven for the cooperation of all Governments concerned. Since 1987 the Intergovernmental Group has removed a number of cases of alleged violations from further consideration on the basis of one or more of the following criteria: (a) when the certificate of discharge submitted confirms the delivery of oil to ports other than those in South Africa; (b) when there is no oil-loading facility in the port concerned; and (c) when it is certified that the ship in question is not capable of transporting oil or petroleum products.

21. In the last three years, the Intergovernmental Group began to collect and examine its own information on port calls that may have resulted in possible deliveries of oil to South Africa. That initiative has supplemented the important contributions made by Governments and non-governmental organizations on the subject. The process helped to cover most cases of possible supply and shipping of oil and petroleum products to South Africa.

22. Below are the results of these two main investigating methods.

A. Cases of alleged violations of the oil embargo reported between 1987 and 1992

23. The Intergovernmental Group has continued to follow up cases of alleged violations by communicating with Governments concerned requesting their cooperation in gathering information, with the purpose of shedding light as to the accuracy of information regarding each case.

24. During 1992 the Intergovernmental Group queried 78 cases of alleged violations that had occurred mainly during the past 12 months. There were 71 cases involving tankers with a total dead-weight ton capacity of over 16.8 million tons, with an additional 7 cases involving combination carriers with a total dead-weight ton capacity of over 700,000 tons. Most of the cases involved oil-producing States.

25. Since the previous report, substantive replies were received from a number of Governments. A summary of communications received from those Governments is given in section B of annex I to the present report (see addendum I). Documentation received was reviewed and the cases with sufficient evidence to dispel the allegations that the oil shipments in question had probably been delivered to South Africa were closed. The cases were consequently removed from annex I. The remaining cases, where sufficient evidence has not been received, have been included in section A of annex I, which contains 292 cases.

26. On 27 March 1992, notes verbales were sent to Governments concerned informing them of 67 cases of alleged violations reported in 1992 and requesting them to verify the information, or submit documentation indicating the contrary. Reminders concerning these cases were sent on 24 August 1992.

27. On 31 July 1992, the Intergovernmental Group sent notes verbales to Governments informing them of cases of alleged violations, thus bringing the total number of cases reported in 1992 to 78.

B. Survey of port calls reported from 1990 to 1992

28. In 1990 and 1991 the Intergovernmental Group sent inquiries to the Governments concerned for a total of 473 cases of port calls that had occurred in the previous year and removed 87 cases from further consideration after receiving information from Governments that excluded the possibility of a delivery of oil or petroleum products. During 1992, the Intergovernmental Group removed another 18 cases from further consideration after receiving information from Governments. Those cases are listed in annex III to the present report (see addendum I).

29. In 1992 it collected information on an additional 252 voyages involving 165 ships, most of which took place in 1991.

30. The time-frame in this survey covers the equivalent of a chronological year. As was the case in the previous years, the majority of the cases involved ships registered in what the Intergovernmental Group has generally termed "oil-shipping States". One State was queried on 58 cases, another on 51 cases and a third on 42 cases. Twelve cases were removed from further consideration after receiving clarification from Governments concerned. Of the remaining cases, 149 involved tankers in the narrower sense, most of which normally carry petroleum products. The total dead-weight ton capacity of those tanker cases was about 1.78 billion tons. On 24 August 1992, reminders were sent concerning those cases.

IV. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

31. Rapid political developments have occurred in South Africa since the adoption of the report of the Group last year. Some of those developments were positive, particularly the continuing conviction among the political parties in South Africa on the need for negotiations towards reaching an agreement both on interim measures and the establishment of a new, united, democratic and non-racial South Africa.

32. The international community has supported CODESA, although it is aware of the fact that not all the political parties in South Africa are participating in the process. CODESA has contributed to the achievement of agreement on a number of principles and steps. It is hoped that the South African authorities will take the necessary steps in cooperation with all political parties and in coordination with the United Nations to bring an end to the violence, thus enabling the negotiating process to resume.

33. The Intergovernmental Group is convinced that the oil embargo may be lifted when an interim government representing the majority of the population of South Africa has been established and when such a government requests the lifting of the embargo.

34. A premature lifting of the oil embargo against South Africa would be counter-productive and harm the negotiating process. It is against this background that the Group believes that the oil embargo against South Africa should be maintained for the time being.

35. The Intergovernmental Group considers it essential that Governments of oil-exporting States maintain their policies and regulations banning the export of oil and petroleum products to South Africa, particularly the restrictions on the final destination of their oil and petroleum products, including the demand and verification of certificates of discharge and other documentation to ensure that those commodities do not reach South Africa.

36. The Intergovernmental Group is also convinced that Governments of oil-shipping States, particularly those whose ships are involved in alleged violations of the oil embargo or in calls at South African ports, are in a position to assist the Intergovernmental Group in its investigation of those cases and port calls, verify information received from other parties on the same cases and ultimately strengthen the oil embargo imposed by all oil-exporting States against South Africa.

37. In view of the above, all Governments concerned, particularly oil-exporting and oil-shipping States, could make a great contribution to United Nations efforts to render the oil embargo more effective by cooperating with the Intergovernmental Group, adopting measures in their respective countries to prevent the supply and shipping of oil and petroleum products to South Africa and taking action to prevent their nationals from engaging in activities to violate the embargo.

B. Recommendations

38. The Intergovernmental Group recommends to the General Assembly that it take note of the present report and endorse the following recommendations:

(a) Until there is clear evidence of profound and irreversible changes in South Africa, bearing in mind the objectives of the Declaration on Apartheid, to call upon States to maintain and enforce existing measures prohibiting the supply and shipping of oil and petroleum products to South Africa and to apply strictly the oil embargo or comparable policies on banning the supply and shipping of oil and petroleum products to South Africa;

(b) To request again all States to cooperate fully with the Intergovernmental Group, particularly in its investigation into the circumstances of alleged violations of the oil embargo or of port calls of ships capable of carrying oil and petroleum products, including, where necessary, the removal by Governments of legal impediments to such full cooperation;

(c) To call upon States to discourage ships capable of carrying oil or petroleum products in their national registries or owned or managed by companies or individuals under their jurisdiction from engaging in activities that give rise to violations of the oil embargo against South Africa;

(d) To endorse its activities as outlined in the present report and to provide it with the resources necessary to execute its programme of work.

Notes

1/ Official Records of the General Assembly, Forty-sixth Session, Supplement No. 43 (A/46/43).